

2 A Yes, there is.

3 MS. GILBERT: I'd like to
4 request at this time that that be
5 provided.

6 COMMISSIONER ARMENTI: Will you
7 provide that, Mr. Dennehy?

8 MR. DENNEHY: Happy to, Your
9 Honor.

10 Q Are there additional entities to
11 which Bell Atlantic offers such charitable
12 deduction?

13 A The types of organizations that
14 may or may not qualify depending on specific
15 circumstances are homes or shelters for the aged,
16 ill or blind, certain non-profit hospitals,
17 certain non-profit medical and dental clinics,
18 certain nursing homes, certain orphanages,
19 Salvation Army locations, volunteer ambulance or
20 rescue squads, certain welfare organizations.

21 That's the type of organization
22 that consistent with the charitable discount
23 tariff would have a chance at being eligible for
24 those sort of discounts.

25 Q Does Bell Atlantic currently offer

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2 any charitable discounts to any New Jersey
3 schools and libraries?

4 A I would say no to libraries. I
5 think there are some very narrow exceptions to
6 schools that are providing aid and comfort to the
7 handicapped for instance, special ed students.

8 It's certainly not an across the
9 board eligibility but there are cases where the
10 particulars of what a school's involved in are
11 able to constitute a case that would make that
12 institution eligible for the discounts.

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2 Q Do you know if that includes both
3 public and private schools?

4 A My reaction to that question is
5 private, no, if by the word "private" I can infer
6 that tuition is charged. Public probably not
7 except for those narrow sorts of specifics that
8 I've already discussed.

9 Again, when you see the criteria,
10 each one of these situations is judged on a case-
11 by-case basis and --

12 Q Mr. West -- I'm sorry, please
13 continue.

14 A I hesitate to provide a general
15 answer to your question but I can tell you that
16 in terms of schools and libraries, the
17 eligibility for them is very narrowly defined and
18 most do not qualify for the discount.

19 Q Are those discounts provided
20 anywhere in the tariff?

21 A Yes, they are.

22 Q Which tariff is that?

23 A It's BPU-NJ No. 2, Section A2,
24 Page 30.

25 Q Mr. West, what are the general

2 criteria for qualifying for that discount?

3 A Some of the primary considerations
4 but not necessarily conclusive are principal
5 work. This provision excludes a number of
6 charitable organizations even though part of
7 their work may be to provide physical aid in some
8 form.

9 For example, some homes and
10 missions may in some instances provide shelter
11 and food; however, their primary work is either
12 of a religious nature or craft training.

13 There would also be instances
14 where an organization's principal work at one
15 location may qualify it for discount while its
16 operations at another may not.

17 Illustrative of this, an
18 organization may dispense relief, for example,
19 food or clothing as a primary function at one
20 location and thus be entitled to a discount.
21 At another address, however, its main work may be
22 in a category of psychological counseling and,
23 therefore, would not qualify for a discount on
24 the service at that address.

25 There are a number of criteria

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2 along those lines in the practice of who
3 qualifies and who doesn't.

4 Q Mr. West, the criteria you just
5 read, is that what would qualify them or what
6 would not qualify them for a discount?

7 A I believe it was both.

8 Q Could you succinctly summarize for
9 me what would qualify an institution, school or
10 library for such a discount?

11 A The discount is allowed to
12 corporations and associations or any branch
13 thereof dependent upon voluntary contribution for
14 their support and to institutions established and
15 maintained by the state, county or municipality
16 when such organizations or institutions are
17 exclusively engaged in charitable work as defined
18 below.

19 Q How is charitable work defined?

20 A I think charitable work is work
21 that you do for free.

22 Q Is that how it's defined in the
23 tariff or is that your belief or how is it
24 defined?

25 A Without doing a thorough review of

2 the tariff, I cannot answer that question.

3 MS. GILBERT: Your Honor, could we
4 request that the tariff be provided?

5 COMMISSIONER ARMENTI: Mr.
6 Dennehy?

7 MR. DENNEHY: You want a copy of
8 the tariff?

9 MR. LEESMENT: Yes.

10 MR. DENNEHY: I have no problem
11 with that.

12 MR. LEESMENT: Thank you.

13 MR. PROVOST: Would that be where
14 the policy is laid out in response to the
15 first question?

16 THE WITNESS: No. There are two
17 documents. There is the BPU tariff and
18 then there's an interpretation document of
19 the tariff which shows how the company
20 applies the tariff.

21 MS. GILBERT: Your Honor, if
22 possible, we would like to have both.

23 COMMISSIONER ARMENTI: Mr.
24 Dennehy?

25 MR. DENNEHY: We're certainly

2 willing to provide the tariff and we will
3 take the other request under advisement.
4 I would like to review it first and, if
5 there's nothing objectionable to
6 providing it, then we'll be happy to do
7 so.

8 MR. BLANDINO: Your Honor, I'd
9 like to request that any submittal that's
10 being provided, that it be provided to all
11 the parties. I am sure it most likely
12 will be.

13 COMMISSIONER ARMENTI: Mr.
14 Dennehy?

15 MR. DENNEHY: We'll be happy
16 to do that, Your Honor.

17 MR. BLANDINO: Thank you.

18 BY MS. GILBERT:

19 Q Mr. West, are you aware of
20 whether any Bell Atlantic Companies currently
21 provide a separate tariff for schools and
22 libraries?

23 A I am not aware of a comprehensive
24 tariff that is separate for schools and
25 libraries.

2 Q Are you aware of statutes in other
3 states that offer a separate tariff for schools
4 and libraries?

5 A No, I am not.

6 Q Are you aware of any orders or
7 decisions of the BPU that has ever stated that
8 public schools and libraries are to be
9 categorized as commercial?

10 A The way I would respond to that
11 question is that the definition of residence is
12 in the tariff and I don't believe schools and
13 libraries fit that definition, and given that the
14 definition is in the tariff, the Board rather
15 explicitly has waded in on that question.

16 Q Sir, I'm not sure I understand
17 your answer. My question is are you aware of any
18 orders or written decisions from the Board that
19 has stated that a public school or library is to
20 be categorized as commercial?

21 A And I think the answer is yes
22 given that you are either commercial or residence
23 and since the Board has approved the tariff pages
24 in some order that define what a residence is and
25 schools and libraries clearly not a residence

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2 and, they've done so.

3 Q So, it's your testimony that the
4 current tariff for Bell Atlantic-New Jersey
5 states that public schools or libraries is a
6 commercial entity?

7 A Yes.

8 Q Can you refer me to that language?

9 A I'm sorry, I don't have the tariff
10 with me.

11 Q If Counsel can provide a copy of
12 the tariff that states that schools and libraries
13 is a commercial entity?

14 MR. DENNEHY: We will be happy to
15 provide such a tariff.

16 Q Is it the position of Bell
17 Atlantic, Mr. West, that public schools and
18 libraries are engaged in commercial activities?

19 A Again, given the dichotomy of the
20 universe is residence and commercial and they are
21 certainly not residences and, therefore, they are
22 commercial.

23 Q So, it's your testimony that
24 entity which does not qualify as a residence is
25 therefore a commercial entity?

2 A That's right. There is only two
3 ways to go with the rate, either a residence rate
4 or a business rate.

5 Q Was this dichotomy created by the
6 company or by the Board?

7 A Well, again, the pages you have
8 asked for will define residence and the remainder
9 of the universe is non-residence or business.

10 Q And who prepared those tariffs,
11 the company or the Board?

12 A Typically the company prepares the
13 tariff and the Board approves them or chooses not
14 to approve them, but the ones that you will be
15 provided obviously will be approved tariffs.

16 Q Mr. West, I'd like to go back to
17 Schedule A once again of the ONJ approved
18 stipulation.

19 A Okay.

20 Q We've gone through a number of
21 hypotheticals today and I believe it's clear that
22 your testimony is that Bell Atlantic's position
23 is that tariff rates are what would be submitted
24 for bidding requirements for purposes of
25 receiving discounts from the Federal Universal

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2 Service Fund.

3 Is that correct?

4 A Yes, unless there was a relevant
5 CSP floating around.

6 Q Mr. West, the column on Schedule A
7 marked Tariff Rates, are those set forth in the
8 existing tariffs that are now at the BPU?

9 A That would be my understanding,
10 yes.

11 Q Are you aware of whether Bell
12 Atlantic has made any adjustments to their
13 tariffs to reflect the rates that are set forth
14 in the column marked Proposed Education Rate?

15 A Not that I'm aware of.

16 Q Are you aware whether Bell
17 Atlantic tends to file adjustments to its current
18 tariff to reflect those proposed education rates?

19 A No, I have no knowledge of that.

20 Q So, the company proposes to
21 provide rates to customers for services that are
22 not set forth in the tariff?

23 A I don't believe I said that.

24 Q I believe your testimony was that
25 the rates in the column marked as Proposed

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2 Education Rate have not been submitted to the
3 Board, have not been reflected in the tariffs
4 currently filed at the Board.

5 Is that correct?

6 A Sure. Those are post-discount
7 rates so to take the tariff rate is in the tariff
8 that the Board has approved, multiply it by the
9 discount rates that are in the stipulation that
10 the Board approved, you get the post-discount
11 rate.

12 So, in that sense, it's
13 derivative. I will give you that. But, it
14 certainly is all Board-approved.

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2 Q Do the tariffs reflect that? Do
3 the current tariffs reflect the percentages that
4 will be taken off the tariff rates to result in
5 the proposed education rates?

6 A I doubt it. I don't know that,
7 but I don't know why they would.

8 Q As a regulated company, shouldn't
9 all services that are provided by the Company be
10 submitted in tariff form to the Board?

11 A I think the FCC a long time ago
12 has waded in on that and there are services that
13 the Company provides that are deregulated and
14 therefore not tariffed.

15 Q I am referring to State regulated
16 rates, Mr. West.

17 A You have defined your own question
18 now. You're asking me is a state regulated rate
19 regulated, and the answer is yes.

20 Q No, I believe my question was
21 isn't the company required to provide state
22 regulated rates in tariff form to the Board?

23 A Yes.

24 Q And it's your testimony that those
25 rates have not been submitted thus far to the

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2 Board in tariff form.

3 A No, it's not. As far as I know
4 the numbers under the tariff rate column is in
5 the tariff.

6 Q And the numbers in the proposed
7 education rate column have not been submitted in
8 the tariff, is that correct?

9 A Nor should they be. They are post
10 discount rates.

11 Q And the percentage discounts are
12 not reflected in the tariff as well, correct?

13 A I don't think so. I think the
14 discounts are in the stipulation.

15 Q But they are not reflected in any
16 tariff.

17 MR. DENNEHY: Your Honor, I think
18 this is the third time that question has
19 been asked.

20 MS. GILBERT: I'm asking for a
21 clear answer. I believe it can be
22 answered

23 by a yes or a no.

24 Q Are they reflected in the tariff?

25 A I don't believe so.

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2 Q Mr. West, if we could go back one
3 more time, I believe the hypothetical we've been
4 using was the SMDS service.

5 A Okay.

6 Q If Bell Atlantic were to submit a
7 bid for the SMDS service, I believe your
8 testimony was that the amount of bid that would
9 be submitted would be \$225, the amount listed
10 under the tariff rates.

11 Correct?

12 A Yes, absent the present of a
13 relevant CSP.

14 Q Are you aware that the FCC
15 requires a school or district to post a bid 28
16 days prior to entering into a contract for
17 telecommunication services to be eligible for FCC
18 discount?

19 A Yes, I am.

20 Q Mr. West, what do you believe was
21 the purpose of this bidding requirement?

22 A To the extent possible, to contain
23 the overall cost of the project so that the
24 discounts doled out by the FCC are therefore
25 contained to the extent possible and to the

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2 extent possible to the extent that the 2.25
3 billion is not breached.

4 Q So just to be clear, under the
5 scenario that I think has been presented before,
6 Bell Atlantic would submit a \$225 bid for SMDS
7 service requested from a school or library, is
8 that correct?

9 A Yes.

10 Q And the school would post a \$225
11 bid to the fund administrator's web site as the
12 lowest available corresponding price, is that
13 correct?

14 A Correct.

15 Q But the school would really only
16 pay \$100 for the SMDS service, correct?

17 A That's the nature of the Schedule
18 A discount, yes.

19 Q And any potential competitor would
20 only have knowledge of the \$225 bid, correct?

21 A Well, they also would have
22 knowledge of the Schedule A discount.

23 Q And where would they obtain that
24 knowledge from?

25 A I think I've already said that

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information would be publicly available. It would be available on web site, but certainly those in the business of bidding against Bell Atlantic or with Bell Atlantic or any way involved in this process would be well aware of the Schedule A discounts as well as the FCC's Universal Service Discount Matrix.

Q Is it your testimony that the Schedule A discounts be made available to the fund administrator to be posted on the FCC Federal Fund Administrator's web site as well?

2 A I don't know if they need to be
3 posted on their web site. Maybe they do, maybe
4 they don't, but certainly the Fund Administrator
5 needs to be aware of this complication, in
6 addressing this complication, and an intimate
7 knowledge of Schedule A would obviously be
8 required.

9 Q And how is the Fund Administrator
10 going to be made aware of this special discount
11 under Schedule A?

12 A I suppose Bell could provide the
13 notification, but I would hope that the Board's
14 Staff and even the Ratepayer Advocate would
15 participate in that effort given that this
16 alternative set of discounts has the possibility
17 of providing the school and libraries with the
18 service at an end user rate or a post-discount
19 rate that is lower than is available through the
20 Federal Universal Service Program.

21 Q Mr. West, is there anything in the
22 FCC Order that requires any party besides the
23 carrier to submit information to the Fund
24 Administrator as to what rates are available?

25 A I don't know there is or there

2 isn't.

3 Q You mentioned that the Schedule A
4 discounts would be made available through web
5 sites. Do you have any web sites in particular
6 that you were referring to?

7 A I know Bell Atlantic has a web
8 site where all this Universal Service information
9 is available and I would assume this would become
10 yet another thing that could be called up on that
11 web site if that's the correct window.

12 Q If a potential competitor that's
13 not based in New Jersey that is not familiar with
14 the Schedule A discounts needed information on
15 those discounts, how would they obtain
16 information based on the fact that you are going
17 to submit a bid for \$225 to the Fund
18 Administrator?

19 A I think as a practical matter, if
20 you were going to come into New Jersey and start
21 bidding against the likes of a Bell Atlantic or
22 an MCI or an AT&T, you would have to know the
23 stuff very quickly to be educated about.

24 Q And you're assuming that knowledge
25 is also available to all the schools and

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libraries that are submitting bids as well?

A Of course they need that to decide whether it's advantageous to choose discounts under the Federal Universal Service Plan or whether they should use discounts under Schedule A.

2 Q And in your opinion, whose
3 responsibility is it to inform the schools and
4 the libraries of this Schedule A discount which
5 is not going to be posted on the FCC fund
6 administrative site?

7 A Again, if you're looking for
8 somebody to accept responsibility, I'm sure Bell
9 Atlantic-New Jersey wouldn't shirk it. But I
10 would think the Board and Staff and Ratepayer
11 Advocate all have a vested interest in this
12 information being disseminated. Because again,
13 it provides a vehicle for perhaps getting a lower
14 post discount rate than is available for the
15 Federal Program.

16 Q Shouldn't the dissemination start
17 with having the rates posted and the tariff
18 available for public view?

19 A You know, if the Board wants to
20 codify this stipulation in a tariff to the extent
21 that the discount applies to tariff rates, I
22 don't see what harm it would do.

23 And if they ask Bell Atlantic to
24 do that, we would naturally comply.

25 Q But at this point in time, Bell

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Atlantic has no intention to codify those rates unless requested by the Board?

A I'm not sure that it's ever occurred to Bell Atlantic as a necessity.

I mean the tariff as you're well aware is a pretty arcane document. I don't imagine that too many schools and libraries are wading their way through the BPU-NJA Number 2.

Q Since you alluded to the tariff as being arcane, Mr. West, how in your opinion should schools and libraries be able to obtain information about these discounts they're aware of that when they see your tariff rates posted on the FCC fund administrative site that is not indeed the price they would actually paying for the services?

A Well, I think I have already stated that we all jointly have a responsibility to make sure they're informed.

MS. GILBERT: I have no further questions.

Thank you, Commissioner.

COMMISSIONER ARMENTI: Ms.
Vachier?

MS. VACHIER: No questions.

COMMISSIONER ARMENTI: Mr.

Dennehy, anything further?

MR. DENNEHY: Yes, I have some
redirect, Your Honor.

REDIRECT EXAMINATION

BY MR. DENNEHY:

Q Mr. West, I would like to clarify
some things that came out on cross examination to
you. You are aware, are you not, that there is a
motion pending for clarification of the terms of
the ONJ stipulation?

A Yes.

Q And you are in fact aware that
that motion is going to be decided this very
afternoon, is that correct?

A My understanding is at 2:30.

Q When Mr. Pappalardo presented you
with the documents this morning, you were not
aware of the substance of the Ratepayer's
response, is that correct?

A That's correct.

Q Mr. West, can I ask you to turn
briefly yet again to the O & J stipulation at

2 page 6?

3 A I'm there.

4 Q I direct your attention to
5 paragraph G.

6 A Okay.

7 Q You will note that it's composed
8 of four sentences.

9 A Yes.

10 Q I would ask you to read the second
11 sentence aloud please.

12 A "If a State or Federal Universal
13 Service policy is established that provides
14 discounts to schools and libraries for services
15 listed in Schedule A, schools and libraries will
16 be able to obtain whichever discount is greater."

17 Q Does that sentence mean to you
18 that a school or library in fact has a choice
19 between Federal Universal Service and ONJ
20 Schedule A discount?

21 A Yes, that's consistent with Bell
22 Atlantic's position that the two sets of
23 discounts are alternative to one another.

24 Q And I would ask you to read
25 sentence number three in paragraph G.

2 A "Nothing in this agreement is
3 intended to prohibit Bell Atlantic-New Jersey
4 from seeking reimbursement for Universal Service
5 Fund for discounts to schools and libraries
6 described herein."

7 Q What does that sentence mean to
8 you, sir?

9 A It means to me that the signatory
10 to the stipulation at the time had no objection
11 to Bell Atlantic seeking reimbursement from a
12 Universal Fund if indeed one was created.

13 Q Now Mr. West, are you aware of how
14 AT&T contends that the ONJ discount rate and the
15 Federal Universal Service discount rates should
16 interface?

17 A Yes, I reviewed Mr. Darrah's
18 testimony. He was an AT&T witness.

19 Q Now it's Mr. Darrah's contention
20 that the interfacing of the Federal Universal
21 Service and Schedule A ONJ discount rates should
22 be contrary to the sentences 2 and 3, is it not?

23 A The way I read his testimony, that
24 is true, yes.

25 Q And let's do the math if we can.